IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

WP(C).No. 26683 of 2005(B)

PETITIONER:

M.ABDUL KALAM, PRASANTH BUILDING,
CHEMMARATHUMUKKU, NAGARUR P.O.
THIRUVANANTHAPURAM 695 618.

BY ADV. SRI.SIBY MATHEW

RESPONDENTS:

KERALA STATE ROAD TRANSPORT CORPORATION
REP. BY ITS MANAGING DIRECTOR, TRANSPORT
BHAVAN, FORT, THIRUVANANTHAPURAM

BY ADV. SHRI.JOHNSON P.JOHN, SC, KSRTC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	**TRUE COPY OF THE OFFICE MEMORANDUM DTD. 14-12-04 ISSUED BY THE RESPONDENT.**
EXT.P2	**TRUE COPY OF OFFICE MEMORANDUM ISSUED BY RESPONDENT DTD.9-6-05**
EXT.P3	**TRUE COPY OF OFFICE MEMORANDUM DTD.25-8-05 ISSUED BY THE RESPONDENT.**
EXT.P4	**TRUE COPY OF JUDGMENT IN W.P.C.NO.12721/05**

RESPONDENT'S EXHIBITS

EXT.R1(A)	**TRUE COPY OF THE GRADE PROMOTION RULES DTD. 9-10-87**

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

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W.P.(C).No. 26683 OF 2005

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Dated this the 27th day of June, 2007

JUDGMENT

Case of the petitioner in brief is as follows:

Petitioner entered service as Reserve Conductor in KSRTC with effect from 19-12-1976. He was absorbed was Conductor Grade II with effect from 28-5-1979. Petitioner was on leave without allowance from 12-1-1989 to 10-3-1991 and from 16-7-1993 to 25-10-1996. As per gradation list of conductors as on 01-04-2001, petitioner was assigned rank No.854. As per Ext.P1 office memorandum petitioner was promoted as Station Master. Thereafter, as per Ext.P2 overlooking the seniority of the petitioner, his juniors in the post of Conductor have been promoted as Inspector, is the case of the petitioner. Still later by Ext.P3 dated 25-08-2005 rank of the petitioner in the gradation list as on 01-04-2001 is modified and re-fixed as 3668A. In Ext.P3 it is stated that petitioner is not eligible for promotion as Station Master and further orders on his promotion as Station

Master will be issued as and when his turn comes in view of the revised rank. In doing so, the authority who issued Ext.P3 has taken note of the fact that petitioner availed leave without allowance as aforesaid and that the said period will not count for grade promotion.

2. Petitioner challenges Exts.P2 and P3. Petitioner seeks prohibition from reverting him from the post of station master and a declaration that he has not lost his seniority as a conductor by availing leave without allowance and that he is entitled to have his seniority under Rule 27 of K.S. & S.S.R. Further direction is also sought to promote the petitioner as Inspector and grant all consequential benefits.

3. In the counter affidavit filed on 21-06-2007, it is interalia stated that KSRTC has introduced time bound/grade promotion with effect from 02/03/1987. It is stated that as per the grade promotion rules, leave without allowance availed for the purpose of other employment will be counted as qualifying for grade promotion if it is availed prior to 23-06-1984. Since the petitioner has availed leave without allowance for employment abroad, the entire period of leave without allowance will not be

counted for grade promotion, it is stated. It is further stated that the name of the petitioner was not included in Ext.P2 only because of the fact that petitioner was assigned the rank of Conductor Spl.Grade by mistake. In other words, it is the case of the respondent that Ext.P3 was issued by way of correcting the mistake.

4. I heard learned counsel for the petitioner and the learned counsel for the respondent also.

5. Learned counsel for the petitioner would submit that Ext.P3 order was passed without hearing the petitioner. He also submits that the matter is settled by the decision of this court which is produced as Ext.P4. It is the common case that before issuing Ext.P3 petitioner was not heard or even issued with any notice. Ext.P2 has the effect of visiting the petitioner with civil consequence as the rank of the petitioner is revised from 854 to 3668A. I feel that Ext.P3 cannot be sustained, in view of the fact that it is passed without complying with the principles of natural justice. Therefore Ext.P3 is quashed. As far as challenge to Ext.P2 is concerned, learned counsel for the petitioner submits that petitioner is not pressing the challenge to Ext.P2. It

is to be noted that persons who are promoted under Ext.P2 are not parties before this court. Therefore it is made clear that Ext.P2 is not liable to be disturbed. A decision in the matter will be taken by the respondent with notice to the petitioner within a period of two months from the date of receipt of a copy of this judgment. It is open to the petitioner to rely on Ext.P4 also.

(K.M.JOSEPH, JUDGE)

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